DAMAGES—UNAUTHORIZED SALE OF STOCK—MEASURE OF DAMAGES.—The plaintiff was a customer of the defendants, who were stock brokers. The defendants agreed to carry certain stock belonging to the plaintiff on margin, but in disregard of the agreement sold the stock. The plaintiff sued the defendants for damages for the breach of contract. *Held,* the plaintiff is entitled to recover the market value of the stock at the time of the sale. *Hall* v. *Paine* (Mass.), 112 N. E. 153.

Generally, the measure of damages in cases where one has wrongfully converted the property of another is the value of the property at the time of the conversion. *Kennedy* v. *Whitwell,* 4 Pick. (Mass.) 466. This rule was formerly applied to all kinds of property; but in the development of the law it was seen that it did not work justice, i. e., compensate the injured party for the real amount of damage suffered, in cases where the property converted was of a greatly fluctuating value. *Dimock* v. *U. S. Nat. Bank,* 55 N. J. L. 296, 25 Atl. 926. In Massachusetts, however, no distinction is made between property of a greatly fluctuating value, such as stocks, and property of a stationary value. Hence, the rule is, as laid down in the principal case, that the measure of damages is the value of the stock at the time of the conversion, with interest to the time of trial. *Wyman* v. *American Powder Co.,* 8 Cush. (Mass.) 168; *Sargent* v. *Franklin Ins. Co.,* 8 Pick (Mass.) 90, 19 Am. Dec. 306.

The first modification of the general rule was the rule of "highest intermediate value." It is, in effect, that the measure of damages is the highest value which the stocks attain at any time from the conversion down to the time of trial. *Romaine* v. *Van Allen,* 26 N. Y. 309. This rule has little in its favor, as it enables the plaintiff by delaying the time of bringing his action to gain from any rise in the market without being exposed to the risk of loss in case there is a drop in the market.

The rule most generally followed in this country is that allowing the plaintiff to recover the highest value attained by the stock within a reasonable time after the conversion for the plaintiff to replace it. *Galigher* v. *Jones,* 129 U. S. 193; *Baker* v. *Drake,* 53 N. Y. 211; *Doyle* v. *Burns,* 123 Ia. 488, 99 N. W. 195; *Citizens' St. R. Co.* v. *Robbins,* 144 Ind. 671, 42 N. E. 916; *Vos* v. *Child etc. Co.,* 171 Mich. 595, 137 N. W. 209, 43 L. R. A. (N. S.) 368. A reasonable time is time sufficient to observe the market, consult a broker and a lawyer, and in general to determine what is the best course of action. *Rosenbaum* v. *Stiebel,* 137 App. Div. 912, 122 N. Y. Supp. 131. Where the converted stock decreases in value, the plaintiff is not to suffer the loss resulting therefrom, but can claim the proceeds of the wrongful sale. *McIntyre* v. *Whitney,* 139 App. Div. 557, 124 N. Y. Supp. 234. The measure of damages is the same whether the action be in tort for the conversion, or in contract for the breach of the agreement. *Wright* v. *Bank,* 110 N. Y. 237, 18 N. E. 79. 1 L. R. A. 289, 6 Am. St. Rep. 356; *Vos* v. *Child etc. Co., supra; Baker* v. *Drake, supra.*

In some jurisdictions the rule is that if the evidence shows fluctuations in value after the conversion, the jury may in their own discre-

tion fix damages at any amount between the market value at the time of the conversion and the highest value before the trial. *Henderson* v. *Hollind*, 1 Ala. App. 400, 55 South. 323. There is much in favor of this rule; for the jury can so exercise their discretion as to prevent the defendant from reaping a profit by his wrongful act, and, at the same time, can by proper consideration of any peculiar circumstances so mitigate the damages as to work justice in every case. See SEDGWICK, DAMAGES, CHAPS. 11 and 12.

EVIDENCE—PRIVILEGED COMMUNICATIONS—HUSBAND AND WIFE.—The defendant wrote letters to his wife in which he admitted his guilt of a crime for which he was indicted. Later the letters came into the custody of third persons. On the defendant's trial the letters were offered as evidence against him. *Held*, the letters were not admissible. *McCormick* v. *State* (Tenn.), 186 S. W. 195. See NOTES, p. 306.

INSURANCE—CONDITIONS—PAROL WAIVER.—The agent of the defendant insurance company, who knew that the premises insured were lighted by gasoline, issued the plaintiff a policy which contained a condition that it should become void if gasoline were used on the premises. A loss having occurred, the plaintiff sued to recover on the policy, and the defendant pleaded the breach of this condition. *Held*, the plaintiff can recover, since the defendant's agent will be deemed to have waived the condition. *Marx* v. *Williamsburgh City Fire Ins. Co.* (Mich.), 158 N. W. 1052. For principles involved, see NOTES, p. 317.

INSURANCE—CONDITIONS—VACANCY OF PREMISES.—A tenant house was insured with a condition in the policy that it would be void if the house became "vacant or unoccupied." The tenant moved his family into another house; but three or four days later, when the house was burned, there still remained some household effects, and upon the premises some chickens, and the tenant still had possession of the key. *Held*, the house was not "vacant or unoccupied." *Covey* v. *Nat'l Union Fire Ins. Co.* (Cal.), 161 Pac. 35.

The weight of authority holds that when the insurance is taken out on a house occupied by a tenant, it is contemplated by the parties that there may be a temporary vacancy during the time required for the change of tenants, and, therefore, the policy is not vitiated thereby. *Roe* v. *Dwelling House Ins. Co.*, 149 Pa. St. 94, 23 Atl. 718, 34 Am. St. Rep. 595. See *Tracy* v. *Queen City Fire Ins. Co.*, 132 La. 610, 61 South. 687. The time allowed for the change of tenants is a reasonable time, considering all the surrounding circumstances. *Liverpool, etc., Ins. Co.* v. *Buckstaff*, 38 Neb. 146, 56 N. W. 695, 41 Am. St. Rep. 724. And see *American Central Ins. Co.* v. *Clarey*, 28 Ill. App. 195. It has been held, however, that the contract should be construed strictly, and hence that immediately upon removal of the tenant the policy becomes void. *Farmers' Ins. Co.* v. *Wells*, 42 Ohio St. 519; *Bennett* v. *Agricultural Ins. Co.*, 50 Conn. 420. Perhaps a majority of the cases hold, in accordance with the principal case, that the vacant or unoccupied clause does not